Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

Leland W. Jacobs,
Petitioner

v.

Rice County, Minnesota

On Petition For Writ Of Certiorari
To The Minnesota Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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33 pp

QUESTION : May a State, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, condition appeal from the trial court decrees terminating parental rights on the necessity of an appeal within 30 days when the trial court makes it impossible for the parent to make a timely appeal by not sending that parent notice until their appeal rights have expired?

PARTIES

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JURISDICTIONAL STATEMENT

This case involves a Federal Constitutional Question as to how a citizen can be deprived of their Constitutional right to rear their children as guaranteed by the Fourteenth Amendment.

The Minnesota Court of Appeals has stated that a citizen of Minnesota must submit a timely appeal within the prescribed time of 30 days once their parental rights are terminated (App.,p.17); but, the court did not address the fact that the parent did not receive a copy of the order from the district court until 50 days after it had been made. (The address of the parent had not changed during the proceeding and was always known to the court administrator.)

The standard of scrutiny, I believe, is "strict scrutiny."

CONSTITUTIONAL PROVISIONS

Article XIV.

Section 1.

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A series of hearings were held on September 26, 28 and 29, 2000, to consider the termination of parental rights of Machell Jacobs and her ex-husband, Leland Jacobs, the petitioner (App.,p.2).

A little over a month later, on November 3, 2000, the trial court issued its order terminating the parental rights of Machell Jacobs and Leland Jacobs (App.,p.2-15). It is to be assumed that Machell received notice of the trial court's action in that her attorney filed a timely appeal on December 3, 2000.

The petitioner, Leland Jacobs, received a copy of his ex-wife's appeal listing him as a respondent and a notice from the Minnesota Court of Appeals that an appeal was being made by his ex-wife which also listed him as a respondent, on December 8, 2000.

After sending a letter (App.,p.25,26) to his ex-wife's attorney to inquire further into what these notices were about (he copied that letter to the court administrator), the petitioner received a copy of the trial court's order on December 23, 2000, 50 days after it had been issued.

1) Because it was too late to file an appeal as an appellant, and 2) because the petitioner was listed as a respondent, and 3) because he did not want the trial court's order undone concerning the termination of his ex-wife's parental rights (and so in that way he saw himself as a respondent), the petitioner filed a timely respondent's brief on March 14, 2001.

On April 17, less than 48 hours before oral arguments were scheduled, the Court of Appeals struck the petitioner's respondent's brief (App.,p.16-18).

On August 15, 2001, the Minnesota Supreme Court dismissed petitioner's petition for review for lack of standing (App.,p.19).

ARGUMENT

This case bears some striking similarities to another case that has been recently decided by this Court. In M.L.B. v. S.L.J., 519 U.S. 102, (1996), this Court decided a case where the State of Mississippi had put up an unsurmountable barrier to the petitioner so that she was unable to obtain a state appellate review of the trial court's termination of her parental rights. In that case it was the fees that the state required that were beyond her ability to pay, so she

could not get an appellate review.

In this case it is Minn. R. Civ. P.126.02 in which the applicable part states, "The appellate court may not extend or limit the time for filing the notice of appeal or the time prescribed by law for securing review of a decision or an order of a court, or an administrative agency, board, commission or officer, except as specifically authorized by law."

The petitioner realizes that such rules serve a good and valuable objective of seeing that there is a time when a judgment can be depended on to be final. But, the rule assumes that all of the parties have received a timely notice of any actions taken that they would have an interest in seeking appellate review. Such is not the case here.

The trial court knew that the petitioner planned on appealing its decision as soon as there was a final adjudication that he could appeal from.

The petitioner had filed an appeal to the Minnesota Court of Appeals on March 29, 1999, asking the Appeals Court to intervene and give him custody of his children at that time. His argument was that the trial court had said to him on July 13, 1998, that it had no intentions of considering placing the children with him (because, the trial court said, the law was only concerned with placing the children back with their custodial parent) and the petitioner felt this was contrary to the intent of the law. The petitioner further felt that as long as the trial court had stated that it was not considering placing the children with him, then, it had no reason to assume jurisdiction over his person.

The petitioner has never received anything from the trial court that indicated that the trial court had changed its position.

In response to the petitioner's March 29 appeal the Appeals Court stated that "appellate review was premature" and would have to await final adjudication of the matter. Minnesota Court of Appeals File No. C7-99-560. The Appeals Court states that rule again in its decision in this Appendix under number 5 of its order (App.,p.17)

The trial court knew the petitioner planned on appealing its

decision as soon as it was finally adjudicated because the things he had earlier appealed to the Appeals Court for remained.

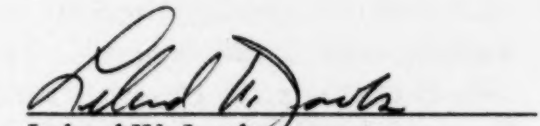
The court administrator or his office has never denied that the petitioner did not receive a timely notice nor has anyone offered any explanation as to why or how it happened.

There are many points in the trial court's findings of facts that ~~are~~ this petitioner would like an appellate court to review. With brevity in mind, on page 4 of the Appendix the court states that the petitioner, "...Leland Jacobs admitted their children were in need of protection or services." The record will show that all the petitioner said was that he didn't doubt that his ex-wife had abused the kids, but he hadn't seen it personally this time. He also said he was there to see if he could have custody of the kids, not have them continue in foster care.

On page 7 of the Appendix, 2nd paragraph, the court states, "...nor did he (petitioner) show proof of eligibility ..." The record will show that he was never asked to and it will also show that he filed two affidavits with the court relative to proceeding In Forma Pauperis, so the court knew the petitioner's financial status.

This petitioner seeks certiorari on this matter, or any other remedy that this Court in its wisdom would determine to be just.

Dated: November 12, 2001



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APPENDIX

Order of Rice County District Court
(dated 11/3/00) ..... Page 2-15

Order of Minnesota Court of Appeals
(dated 4/17/01) ..... Page 16-18

Order of Minnesota Supreme Court
(dated 8/15/01) ..... Page 19.

Letter and Affidavit to Rice County District Court
(dated 9/12/00) ..... Page 20-24

Letter to John L. Fossum, Esq., ex-wife's attorney
(dated 12/14/00) ..... Page 25,26

STATE OF MINNESOTA COUNTY OF RICE	IN DISTRICT COURT THIRD JUDICIAL DISTRICT
In the Matter of the Welfare of: Paul Michael Pratt, Child. and In the Matter of the Welfare of: Jonathan and Nathan Jacobs, Children.	File No. JX-00-50326 AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER File No. J1-00-50327

The above-entitled matters came before the undersigned for hearing on September 26, 28 and 29, 2000, on Petitions to Terminate the Parental Rights of Machell Jacobs to Paul Michael Pratt and to Terminate the Parental Rights of Machell Jacobs and Leland Jacobs to Jonathan and Nathan Jacobs. The two matters were joined for hearing.

The children did not appear personally, but their Guardian Ad Litem, Jackie Mollenhauer, and attorneys, Gregory Colby for Paul Pratt and Stephen Ecker for Jonathon and Nathan Jacobs, were present. The children's mother, Machell Jacobs appeared personally, together with her attorney, John Fossum. The father of Paul Pratt is unknown. The father of Jonathan and Nathan Jacobs, Leland Jacobs, did not appear personally or by counsel. Meredith Erickson, Senior Assistant County Attorney, appeared for the Petitioner.

Based upon the evidence adduced at the hearing, the arguments of counsel, judicial notice of the court orders in In re the Welfare of Paul Michael Pratt, File No. J6-98-50261, and In re the Welfare of Jonathan and Nathan Jacobs, File No. J1-98-50262, judicial notice of the criminal file State v. Jacobs, File No. KX-98-489, and all the documents and records on file herein the court makes the following:

FINDINGS OF FACT

1. Paul Michael Pratt was born on August 26, 1996. His mother is Machell Jacobs; his father is unknown.

Jonathan Jacobs was born January 13, 1993. Nathan Jacobs was born September 17, 1994. Their mother is Machell Jacobs and their father is Leland Jacobs. Leland and Machell Jacobs were married on April 17, 1993. On April 20, 1998, a divorce decree was entered in Ramsey County-Family Court. Machell was granted sole legal and physical custody subject to Leland's liberal visitation rights.

2. Leland Jacobs was personally served with the Summons and Petition seeking termination of his parental rights on August 25, 2000. He has made no appearance in this proceeding except by letter dated September 12, 2000. In that letter, Mr. Jacobs stated his disagreement with the Orders of Judge Borene in the ChIPS case and denied that any grounds exist for termination of his parental rights in the instant case. He also indicated he has no intention of appearing in the instant case, and challenged the jurisdiction of the Rice County District Court to hear this action to terminate his parental rights.

3. On or about December 30, 1997, Rice County Social Services investigated a report of possible child abuse against Nathan. Nathan, then age 3 years of age, had visible bruising on his buttocks. In discussions with Rice County Child Protection Investigator Ann Riebel, the mother admitted Nathan's bruises were probably from her hitting him. She also admitted hitting Jonathan, then 4 years old, in the mouth.

4. On or about March 30, 1998, Jonathan's hand and wrist were swollen and sore. Nathan also complained of a sore hand and wrist. Machell Jacobs admitted these injuries were caused by her hitting the children with a spoon. On July 14, 1998, Machell was convicted pursuant to her guilty plea of Malicious Punishment of a Child in violation of Minn. Stat. §609.377. At the plea hearing, she testified that (1) she hit Jonathan on the wrist with a spoon after he refused to go upstairs, (2) the hit caused a bruise that went from his knuckles to above his wrist, and (3) that Jonathan was 5 years old at the time.

5. Following this second admission of physical force causing visible injuries to the children, Rice County Social Services filed a

ChIPS petition on all three children. On May 14, 1998, Machell and Leland Jacobs admitted their children were in need of protection or services (1) because they had been the victim of child abuse or were residing with the perpetrator of child abuse and (2) because they were without necessary food, clothing, shelter, education or other required care because their parents were unable or unwilling to provide that care. Judge Bernard E. Borene accepted the admissions and adjudicated all three children to be in need of protection or services within the meaning of Minn. Stat. §260.015, Subd. 2a(2) and 2a(3). The children were placed in licensed foster care subject to regular consistent visitation by their parents at a length, frequency and level of supervision to be determined by Rice County Social Services. Physical placement of the children was made in the Krippner foster home.

6. At the Krippner foster home, additional problems involving the children became clear. They were extremely thin: their rib cages were visible from th back, their ribs were visible on the side, their stomachs were protruding, and their faces were drawn. They gave the impression of having suffered from significant malnutrition.

They also showed extremely limited social skills. The oldest boy, Jonathan, appeared less alert and active than other children his age. When Jonathan was disciplined for misbehavior, he would simply "shut down", showing no visible acknowledgment or interaction with the person correcting his behavior. He did not respond well to direction by the foster parent.

Nathan, the middle child, had many anger outbursts during the day. During Nathan's temper tantrums, the foster parent would simply hold him to control his behavior. In the beginning, it would often take 35 to 40 minutes of being held on her lap before Nathan would calm down.

The youngest child, Paul, was very active. He opened doors, medicines, or anything else within his reach. He never responded to redirection. He seemed to think that redirection or discipline was simply a game being played with him by the adults in charge.

All three boys showed troubling sexual behavior. The foster parent testified that she had never seen such aggressive play between

siblings. The three boys had a game they called "married" in which they would fondle each other's genitals. The children could not be bathed together because they would fondle each other's genitals with their hands or mouth.

7. During this extended period of out of home placement, from May 1998 until the date of this hearing, County Social Services has made extraordinary efforts to reunify Ms. Jacobs and her children.

A. Social Services arranged for supervised visitation with the mother and the minor children. Visitation was gradually increased and eventually became unsupervised, including overnights. Problems arose, however, requiring Social Services to revert back to supervised visits. During the initial period of supervised visitation, from May 1998 through September 1998, the foster mother observed that Machell Jacobs would play with the boys fairly roughly, and her manner when disciplining the boys was the same as the manner of her rough play. The foster parent felt this was quite confusing to the boys. When the play with the boys became too aggressive, the mother was not able to redirect them. She would yell at or shake the children.

Other visitation supervisors noted the same problems of interaction between the mother and the children. She was not able to redirect the boys with positive alternatives, but would simply yell at them to stop their activities or to "shut up". Even when she would verbally use negative corrections to try to get the boys to change their behaviors, she would rarely follow through with any actual action. There seemed to be no consequence for ignoring mother's instructions. She also would not identify the behavior that she wanted the boys to change. She might yell "stop" or one of the children's names, but it was not always clear to the visitation supervisors, or presumably to the boys, what behavior she wished the boys to change.

Unsupervised visitation was terminated when reports of continuing roughness with the boys were received by Social Services. The most egregious incident occurred when the mother was observed shaking one of the boys roughly for crying too loud while walking to the foster mother's car. When the foster parent tried to intervene, the

mother said she could do whatever she wanted to her kids, including physically discipline them. She also raised her fist in a threatening gesture towards the foster parent.

B. The County offered extended periods of parental assistance through the Public Health Nursing Service from May 1998 through December 1999. The Public Health Nurses made 23 visits to the mother during this period, and parent aids made an additional 103 visits. Unfortunately, the services through the Public Health Nurse and parent aids were not effective in changing the mother's behaviors in interacting with the children. The service was terminated in December 1999 because there had been little or no improvement and the program had no additional resources to offer.

C. The mother has been diagnosed as mildly mentally retarded and is receiving Social Security disability payments because of her retardation. Rice County Social Services offered Title 19 Waivered Services for the Developmentally Disabled. This is an extensive service intended to allow developmentally disabled people, who would otherwise be institutionalized, to live in the community. The County arranged to provide these services for Ms. Jacobs not because her disability was likely to lead to her institutionalization, but because this might assist in reunifying the children with Ms. Jacobs. Again, this was unsuccessful. No substantial change in Ms. Jacobs' parenting skills were observed.

Waivered Services were discontinued when the person working with Ms. Jacobs observed the threatening gesture from Ms. Jacobs to the foster parent and determined that it was unsafe for her to continue to work with her. The County was not able to find another individual to provide the waivered services.

D. The County sought to provide full family foster care for Ms. Jacobs and the children, but was unable to find an appropriate foster home. The County sought to provide full family foster care for Ms. Jacobs and the children, but was unable to find an appropriate foster home. The County investigated three homes that might be appropriate in Rice County and Region 10. Two of the homes were rejected as unsuitable by Ms. Jacobs, which rejection was concurred in by Social Services, and the third declined to participate because of the over sexualized behaviors of the children. No suitable family

foster care was found.

E. The County was unsuccessful in offering any effective services to the father, Leland Jacobs. Mr. Jacobs' visitation with the children was to be supervised at all times, and Judge Borene made repeated Orders in the ChIPS cases that Mr. Jacobs was not to have unsupervised visitation with the children nor was he to utilize Ms. Jacobs as the supervisor. Mr. Jacobs made himself available for only one supervised visitation during the pendency of the child protection matter. There almost certainly were additional unsupervised visits in periods when Mr. Jacobs was residing with Ms. Jacobs in th family home, but there was no consistent pattern of contact between Mr. Jacobs and the children.

The ChIPS orders of Judge Borene also required Mr. Jacobs to obtain a psychological evaluation and follow through with any recommendation from the evaluation. Mr. Jacobs was also ordered to sign waivers to allow Social Services to obtain information and evaluations from professionals who had knowledge of Mr. Jacobs' interactions with the children. Mr. Jacobs refused to provide a psychological evaluation, agreeing only to have one done by a person with whom he was personally acquainted, and at the County's cost. He did not provide a waiver of privilege in suitable form, nor did he show proof of eligibility for subsidized services form either Rice County or Ramsey County where he resided.

Mr. Jacobs was not willing to advise the County of his place of actual residence, but used a post office box for all communications with Rice County. He repeatedly instructed the County that he desired to communicate only in writing and would not submit to personal interviews or allow an inspection of his residence to determine the suitability fo visitation or custody with the children.

8. During the pendency of the ChIPS proceedings, both Leland Jacobs and Machell Jacobs failed to comply with the court's orders. On October 26, 1998, both parents failed to appear for a review hearing. The father failed to appear at any of the five subsequent review hearings. At February 22, 1999, review hearing, the court also found that the father was having unsupervised visits with the children contrary to the order entered on December 10, 1999. The mother was found to have failed to enforce the supervised visits.

On May 10, 1999, the court found that the father, Leland Jacobs, failed to comply with a prior order to participate in a psychological evaluation and follow the recommendations, to sign a release of information form to allow Rice County Social Services to receive a copy of the completed evaluation, to refrain from unsupervised visits, and to allow Rice County Social Services access to his address and residence for purposes of determining whether the residence is suitable for visitation.

On September 2, 1999, the court found that Machell had become resistant to some of the recommended services. On January 20, 2000, the court found that Machell was still striking the children. Northfield police had to assist three times due to Machell's behavior. Machell also failed to administer medication to the children.

9. Despite the minimal participation of either parent, the boys seemed to have thrived in foster care.

Jonathan's improvement is the most striking. In August 1998, he was diagnosed as severely developmentally delayed. On one standard test, the Battelle Developmental Inventory, Jonathan was in the first percentile on all the sub tests. The psychologist who administered the test was concerned that Jonathan may be significantly mentally retarded. Similarly, he was at or below the first percentile on all five scales of the McCarthy Scales of Children's Abilities administered in the Spring of 1999. His "General Cognitive Index" was below the first percentile.

Jonathan received special educational services during the 1999-2000 school year, attending early childhood special education classes in th morning and kindergarten classes in the afternoon. He was also placed on Ritalin to address his diagnosis of attention deficit hyperactivity disorder.

Since Jonathan's placement in foster care, school staff have noticed a remarkable improvement in his behavior. They feel he can now be mainstreamed in first grade without any special educational services.

Similarly, Nathan has markedly progressed in his social skills. When he was placed in foster care, he was viewed as a very angry child, subject to intense temper tantrums, who seemed not to care if he or other children got hurt. He was a "loner" who did not get

along with other children. Now Nathan is mainstreamed in kindergarten and is doing quite will in school. He appears to be a desirable playmate to other children his age.

Because Paul is so young, it is harder to describe the changes in his abilities, he also has improved remarkably in the 2 years he has been out of Machell Jacobs' home. Becky Krippner, the foster parent who had the children in foster from March 1998 until April 2000, described the improvement of all three children very succinctly. When she first had the three boys in her home, she stated that other children would leave the room when Jonathan, Nathan, or Paul would enter. By the end of their placement in her home, other parents would call to see if they were available to play with their children.

9. The Guardian Ad Litem, the Social Service worker responsible for this case, and Daniel Dimmick, a family therapist who did a parenting assessment of Machell Jacobs, all testified that, in their opinion, Ms. Jacobs was not now, nor would she become in the foreseeable future, capable of parenting the boys adequately. All three noted that Ms. Jacobs seems to be intellectually incapable of appropriate parenting, particularly as the boys get older. Although she was closest to Paul as a toddler, as the boys got older and more challenging, Ms. Jacobs' skills were not up to the task. Each testified, and the court is persuaded, that Ms. Jacobs simply is unable to understand and respond to the boys' physical, emotional, or developmental needs. Despite almost two and one half years of foster care and services to assist her in parenting, Ms. Jacobs has been unable to learn necessary parenting skills to allow her to effectively meet the needs of her children. There is, unfortunately, no reason to believe that she will become able to do so in the foreseeable future.

Based upon the foregoing the court makes the following:

CONCLUSIONS OF LAW

1. This court has jurisdiction to hear this Petition to Terminate the Parental Rights of Machell Jacobs and Leland Jacobs. The juvenile court has original exclusive jurisdiction in proceedings concerning termination of parental rights. Minn. Stat. §260C.101, Subd.2(a). Venue for a termination of parental rights proceeding exists in either the county where the child resides or where the child

is found. If, however, there has been a disposition based on a finding that the child is in need of protection or services, then venue is in the county in which that disposition was made unless the case is transferred. Minn. Stat. §260C.303. At the commencement of this proceeding, all three boys resided in Rice County and were physically present in this county. Additionally, the ChIPS case had been venued and heard in Rice County.

2. Although she was physically and financially able to do so, Machell Jacobs has substantially, continuously, and repeatedly neglected to comply with the duties imposed upon her by the parent and child relationship with her children, by failing to provide the children with necessary care and control required for their physical, mental, and emotional health and development, and reasonable efforts by the social services agency have failed to correct the conditions. Minn. Stat. §260C.301, Subd.1(b)(2).

Machell Jacobs has been unable to provide the children with the basic care and discipline necessary for their emotional and mental health and development. Their almost total lack of social skills when placed in foster care is a result of Machell Jacobs' inability to provide them with the basic parenting necessary to allow them to develop such basic life skills. She was, unfortunately, unable to provide them with any discipline, relying on verbal demands with no follow through and sporadic excessive physical force. Similarly, Jonathan's diagnosed developmental delays on all the basic tasks of childhood show the effect of substantial parental neglect.

Although merely showing the children's developmental delays when bought into foster care would not prove this element by clear and convincing evidence, the additional proof is established by their substantial turnaround in the two and a half years they have been receiving foster care and Social Service assistance. Observation of Ms. Jacobs' parenting by the social worker, the waivered services provider, and the foster parent also provide proof of her inability to effectively parent the children. Finally, the evidence shows her inability to correct the problem in parenting despite the extraordinary efforts made by Social Services to assist her in parenting.

In her memorandum, Machell Jacobs argues that this basis for termination of parental rights has not been proven because any failure

in her parenting was the product of her mental retardation and her poverty, and thus she has not been shown to be "physically and financially able" to meet her responsibilities as a parent. This argument fails because Ms. Jacobs moderate mental retardation does not fall with the sort of physical inability contemplated by the statute.

First of all, the statutory exemption for physical and financial inability to comply with the parenting duties indicates a legislative distinction between those sorts of disabilities and mental or emotional disabilities. The use of the term "physical" excludes the term "mental"a under the familiar doctrine of *expressio unius est exclusiio alterius,* (the expression of one thing is the exclusion of another) as codified by Minn. Stat. §645.19. See Westbrooke Patio Homes Ass'n, Inc. v.Goodrich, 607 N.W.2d 455, 458(Minn.App.2000). Furthermore, parental deficiency resulting from mental retardation has been explicitly held to justify the termination of parental rights. See In re Welfare of M.M.D., 410 N.W.2d 72, 75 (Minn.App.1987) and In re Welfare of T.M.D., 374 N.W.2d 206, 211 (Minn.App.1985). While a difficult and close issue of statutory interpretation may be raised if a parent's mental inability to meet the needs of her children were a result of a physical injury, there is no evidence in this case of any physical condition leading to Ms. Jacobs' mental retardation.

Similarly, there is no evidence that the parenting failures of Ms. Jacobs were caused by her poverty rather than by her fundamental inability to parent. While no one could deny that financial poverty greatly increases the pressures on a parent and makes parenting more challenging, there is no evidence that the lack of basic parenting skills shown by Ms. Jacobs are the result of that poverty.

The court finds this basis for termination of Machell Jacobs' parental rights has been proven by clear and convincing evidence.

3. Following the children's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the children's placement. Minn. Stat. §260C.301, Subd. 1(b)(5).

Social Services made more than reasonable efforts to attempt to correct the problems in the Machell Jacobs home that led to the

children's placement out of the home. The County social service agency initially provided for supervised visitation, hoping that would allow the mother to reestablish a healthy relationship with the children and learn more appropriate disciplinary techniques. The County also offered extraordinary involvement by the public health nurse and parent aids. Again, the goal was to try to help Machell Jacobs learn how to parent effectively. Next, the County arranged for Waivered Services under the Federal program to assist developmentally disabled people, crafting resources normally used to prevent out-of-home placement of mentally retarded adults into a program seeking to avoid out-of-home placement of the children of a mentally retarded adult. Finally, the County explored, although it was unable to implement, full family foster care in which Machell Jacobs and the three children would reside in a foster home setting to offer continuous supervision of her efforts to parent the children. There is no suggestion of any additional services the County could have provided.

Leland Jacobs, father to Jonathan and Nathan, simply refused to involve himself with any attempts to reunite his two children with Machell Jacobs, and never complied with any of the basic steps necessary for placement of the children with him. Although he maintained that he wanted the children placed in his custody, he never advised the County of his address, the nature of his residence, nor submitted to any inquiry or evaluation by Social Services that would establish the suitability of his home as the custodial residence of the children.

The court finds this basis for termination of Machell Jacobs' and Leland Jacobs' parental rights has been proven by clear and convincing evidence.

4. Leland Jacobs neglected the children while they were in foster care. Minn. Stat. §260C.301, Subd. 1(b)8.

As noted above, Leland Jacobs refused to participate in any efforts of Social Services to remedy the conditions that led to the children's placement out of the home or to assist in reunification with either parent. The Social Worker aptly described his involvement in this case as one showing more interest in a theoretical dispute with Social Services than in providing help for his children. The record

does not show a single action by Mr. Jacobs to meet with the children, help with the children's medical or emotional needs, or investigate the suitability of his home for the children.

The court finds this basis for termination of Leland Jacobs' parental rights has been proven by clear and convincing evidence.

5. Machell Jacobs is palpably unfit to be a party to the parent and child relationship because of a specific condition directly relating to the parent child relationship which is of a duration or nature that renders a parent unable, for the reasonably foreseeable future, to care appropriately, for the ongoing physical, mental or emotional needs of the children. Minn. Stat. §260C.301, Subd. 1(b)(4).

The history of this prolonged ChIPS matter without substantial improvement by the mother and the testimony of Daniel Dimmick, the Guardian ad Litem, and the Social Services case manager show that Machell Jacobs' intellectual deficits are such that she is not now, nor will she become in the foreseeable future, able to parent these children.

Although the record is persuasive in showing the inability of Machell Jacobs to effectively parent the children, her failure to improve her parenting during the prolonged ChIPS case, and the opinion testimony that Machell Jacobs' inability to parent will continue for the foreseeable future, there is very little evidence of the developmental disability or mental retardation constituting Ms. Jacobs' "specific condition" which brings her within this part of the statute. Were there any evidence to suggest that there were some other factors leading to Ms. Jacobs failure to parent these children adequately, the court would find this element not proven. Given the strength of the behavioral evidence, however, the court finds that the unrebutted, though skimpy, evidence of her mental retardation meets the terms of this statute.

The court finds this basis for termination of Machell Jacobs' parental rights has been proven by clear and convincing evidence.

6. Termination of parental rights is in each of the children's best interests. See Minn. Stat. §260C.301, Subd. 7.

In determining the best interests of the children, the court must balance three interests: 1) each child's interest in preserving the parent-child relationship, 2) each parent's interest in preserving the

parent-child relationship, and 3) any competing interest of the child. In re Welfare of R.T.B., 492 N.W.2d 1, 4 (Minn.App.1992).

As to Leland Jacobs, the analysis is quite straightforward. There is no evidence of any ongoing parent-child relationship between either Jonathan or Nathan and their father that can be preserved. Since March 1998, any contact between the boys and their father has been sporadic and secretive. While there is undoubtedly a value to the potential of the biological relationship, there is no ongoing, active relationship that either the father has sought to preserve or that os known to exist in the mind of either of the children.

The analysis as to Machell Jacobs is more difficult. She has been an active force in all three children's lives since their births and she clearly loves them. They have looked forward to visiting with Ms. Jacobs while in foster care, and have been devastated when scheduled visits have fallen through. Both the boys and Ms. Jacobs have a strong interest in preserving the parent-child relationship.

The competing interests of the children, however, outweigh their and their mother's interest in preserving the mother-child relationship. As noted above, Ms. Jacobs is simply not capable of meeting her children's needs. They have spent two and a half years in foster care, and there is no reasonable likelihood that they could be returned to Ms. Jacobs home in the foreseeable future. The unrebutted testimony is that the children are readily adoptable, and if adoption occurs quickly, all three may be kept together in a single adoptive home. Termination of parental rights followed by adoption offers the children's best hope to permanency, stability, and a healthy, developmentally appropriate childhood.

Based upon the foregoing,

IT IS HEREBY ORDERED

1. The parental rights of Leland Jacobs and Machell Jacobs to Jonathan and Nathan Jacobs are hereby terminated. The parental rights of Machell Jacobs to Paul Pratt are hereby terminated.

2. All children are placed in the legal custody and under the guardianship of the Commissioner of Public Welfare pursuant to Minn. Stat. §.325, Subd. 1.

3. Pursuant to Minn. Stat. §260C.317, Subd.3(b), this court

maintains continuing jurisdiction. The Guardian ad Litem and the attorneys for the children shall continue on the case until an adoption decree is entered. Review hearings shall be held every 90 days to review progress toward an adoptive placement.

Dated this 2nd day of November.

BY THE COURT:

s/_____

WILLIAM A. JOHNSON

JUDGE OF DISTRICT COURT

RICE COUNTY, MINN.

FILED

NOV 3 2000

s/_____

COURT ADMINISTRATOR

OFFICE OF
APPELLATE COURTS
APR 17 2001

STATE OF MINNESOTA

FILED

IN COURT OF APPEALS

In the Matter of the Welfare of:
P.M.P., Child, and
In the Matter of the Welfare of:
J.J. and N.J., Children.

ORDER

C7-00-2090

Considered and decided by Amundson, Presiding Judge, Foley, Judge,[1] and Huspeni, Judge.[1]

BASED ON THE FILE, RECORD, AND PROCEEDINGS AND BECAUSE:

1 This appeal by M.J., the mother of P.M.P., and J.J. and N.J., is scheduled for oral argument on April 19, 2001. M.J. seeks review of a November 3, 2000, order terminating her parental rights to all three children.

2. The November 3 order also terminates the parental rights of L.J., the father of J.J. and N.J. L.J. did not file an appeal of the November 3 order.

3. L.J., pro se, filed a purported "respondent's" brief in this appeal in which L.J. challenges the provisions of the November 3 order terminating his parental rights.

4. L.J. is not a true respondent to this appeal, because he

---

[1]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. Art. VI, §10.

seeks reversal of the November 3 order and has not taken a position adverse to M.J.'s appeal. See Minn. R. Civ. App. P. 143.01 (defining respondent as "adverse party"); *Larson v. LaMere,* 220 Minn. 25, 27-28, 18 N.W.2d 696, 698 (1945) (defining "adverse party" as any party who would be prejudiced by a reversal or modification of an order, award, or judgment).

5. An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person. Minn. Stat. §260C.415, subd. 1(2000). The appeal shall be taken within 30 days of the filing of an appealable order. *Id.* Because L.J. failed to file a timely appeal of the November 3 order terminating his parental rights, we lack jurisdiction to consider L.J.'s arguments challenging the termination. *See* Minn. R. Civ. App. P. 126.02 (prohibiting appellate court from extending the time prescribed by law for securing review of a decision or an order of a court); *In re Welfare of D.B.,* 463 N.W.2d 301, 302 (Minn.App.1990) (holding that the court of appeals lacks jurisdiction to consider an untimely appeal from a final order in termination proceedings).

6. L.J. filed a motion for an order requiring the trial court administrator to transmit the files of related CHIPS proceedings involving the children. In the November 3 order, the trial court stated that it took judicial notice of the orders filed in those proceedings. Normally, the trial court may take judicial notice of the content of previous orders in related proceedings. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 174 (Minn.App.1997). L.J. has cited no authority requiring transmittal of a file in a related proceeding on the ground that the trial court took judicial notice of orders issued in the proceeding. Moreover, because L.J. is not a proper party to this appeal, L.J. lacks standing to seek relief from this court.

IT IS HEREBY ORDERED:

1. The motion by L.J. to require the trial court administrator to transmit the files of related proceedings is denied.

2. The purported respondent's brief submitted by L.J. is stricken.

3. L.J. may not participate in the oral argument scheduled for April 19, 2001.

Dated: 4/17/01

BY THE COURT

s/_____

Judge Roland C. Amundson

AW/dr

OFFICE OF
APPELLATE COURTS
AUG 15 2001

STATE OF MINNESOTA

FILED

IN SUPREME COURT

C7-00-2090

In the Matter of the Welfare of: P.M.P., Child, and
In the Matter of the Welfare of: J.J. and N.J., Children.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Leland W. Jacobs for further review be, and the same is, dismissed for lack of standing.

Dated: August 15, 2001

BY THE COURT:

s/_____
Kathleen A. Blatz
Chief Justice

September 12, 2000

The Honorable Judge William A. Johnson
218 NW Third Street.
Faribault, MN 55021

RE: Rice County District Court
File No. J1-98-50262

Dear Judge Johnson,

I was recently served two summons for what appear to be the same action on two different days and times (please see the attached copies). One is on 9/21/2000 at 10:30 AM and the other is on 9/26/2000 at 9 AM. Both are unsigned.

You, of course, have the file on this case; but, let me state to you under oath:

While Machell and I were in the midst of a divorce action which I had initiated in 1996 to try to maintain the custody I had of our children so that I could put a stop to the abuse Machell tried to inflict on the children when she was angry, I received a phone call from Machell saying she had "lost it" with the kids. She was calling me in St. Paul from her friend Sue Root's phone in Northfield. Sue confirmed to me that Machell had indeed abused the kids. Because I knew that later she would deny the abuse as she had been continuously doing during the divorce trial, and because the Referee in Ramsey County Family Court had taken the kids from me and given Machell temporary custody so I didn't know what I could do without being in contempt of court, and because I had moved into a single room in a St. Paul hotel, I called the Northfield Police. In a later conversation that evening with a Northfield Police Officer she stated to me that Machell had calmed down and that social services would be notified the next day so she thought the kids would be OK.

That happened in the last week of December, 1997.

Subsequently the kids were taken away from Machell and a hearing was held on April 2, 1998. I was not notified of that hearing. I was notified of a hearing on April 13, which I attended for the sole purpose of seeing if I could have custody of the kids. During that hearing Judge Borene stated that he had been in telephone contact with Referee Williams of Ramsey County Family Court. This is the referee that presided over our divorce proceeding and had ordered the kids removed from my home and given to Machell in the first 15 minutes of our appearance before him (even though Machell couldn't say where she was living for sure). This is the referee that had through one judicial ruling after another kept out practically all the evidence relating to Machell's abuse of the kids; and, this is the referee that was in the process of granting Machell permanent custody of the kids.

The next and last hearing I attended before Judge Borene (after having my children ripped out of my arms, at the end of the only supervised visitation I went to, by the social worker and the guardian ad litem while the kids cried almost convulsively to be left with me), Judge Borene said he had no intention of granting me custody of the kids, and that his sole objective was reunification of the kids with Machell. He further ordered me to sign some releases for a criminal background check for social services and ordered that I had to submit to some psychological tests for social services. I told social services by letter that I would submit to the psychological testing for my kid's sake as long as the tester was independent. Social services would not hear of it. I have since come to believe that these actions are an invasion of my right to privacy because the Rice County District Court does not have personal jurisdiction over me. The only reason I signed those releases that day was that I did not want to be found in contempt of court and be arrested as I walked from the courthouse.

As already alluded to, Judge Borene had also ordered that I could only have supervised visitation with my kids. This action overruled my visitation rights as established by the Orders of the Ramsey

County Family Court. I have come to believe that this action is a felony as the exceptions to that law as it relates to a district court action do not apply in this case.

In my research I came across Minn. Stat. §609.26 DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS. Subd.1 states as a prohibited act, "Whoever intentionally does any of the following acts may be charged with a felony ... :(3) ... retains ... a minor child from ... the parent in violation of a **court order** (emphasis added), where the action manifests an intent substantially to deprive that parent of rights to visitation or custody." I believe that a felony, in the plain reading of the law, has been and is being committed by the Court because of its failure to honor the Ramsey County Court Order with not one scintilla of evidence before it to justify its actions or to render any of the defenses in Subd.2 of that Statute applicable.

Further, the law states a preference to unite children with their parents (and I am one of the children's parents) i.e. "removing the child from the custody of the **parents only** (emphasis added) when the child's welfare or safety cannot be adequately safeguarded without removal ..." (Minn. Stat. §260.011, Sec.23, Subd.2).

To point out the bias of Rice County Social Services, their petition, and its author, I would simply ask you to find one fact in the record that could serve as a basis for even considering the termination of my parental rights with my kids. It could be that Rice County Social Services and/or the Rice County Attorney's Office is still angry at my appeal of their child support case. In that case I stated to the Minnesota Court of Appeals that the action was, among other things, illegal because the administrative branch of government was usurping power that rightly belonged to the judicial branch and that the CSO in the matter was illegally practicing law without a license. I lost my appeal but was later vindicated when the Court of Appeals reversed itself in a later case. That decision affirmed the grounds of my appeal and was itself affirmed by the Minnesota Supreme Court, Holmberg v. Holmberg, et al., 588 N.W.2d 720 (Minn.1999); so that,

ultimately they know I was right and had the law on my side. Thus, they know that though they continue to collect child support from me each month, the basis for their collection was later ruled illegal, just as I said it was.

Another possible reason for their bias against me and my children is found in the opening of every report to the Court from the social worker and the guardian ad litem. Each report cites the age difference and the difference in ethnicities between Machell and I. One could conclude that these two facts are extremely important to someone - perhaps the authors.

After the Ramsey County Court gave Machell temporary custody, I would have to drive the boys back to Northfield. As soon as they realized I was taking them back to their mother, which usually didn't happen until we were in Northfield, they would begin crying and pleading with me not to take them back. I would try as best I could to explain to them that I had no choice. I knew by their actions that I was bringing them back to some kind of hell. Their hell has continued in foster care as they are drugged for simply being active, normal boys that are longing to be with the parent they are bonded to. I am the parent the boys are bonded to and the one they looked to for protection, protection I have been denied in giving them.

The enclosed photograph of the boys, taken on July 1, 1998, speaks of how they have had to look toward each other in the midst of this ordeal for support. Their hell should stop. Jonathan and Nathan should be returned to me along with their younger brother, Paul. Separating them would simply continue, or begin a new phase, of their unwarranted punishment; and, I have always been "daddy" to Paul.

In summary, I do not plan on appearing in Rice County District Court on this matter to have my right to privacy further invaded. As I stated earlier, I believe Rice County District Court is without personal jurisdiction over me and there is certainly no basis in fact for the Court to even consider what it appears the Court is considering.

By the above statements I mean absolutely no disrespect for your's or Judge Borene's high office; but, I do feel the law is on my side.

Date: 9/12/00

s/_____
Leland W. Jacobs
Post Office Box 4532
St. Paul, Minnesota 55104-4532
612.384.8744

Subscribed and sworn before me on
_____, 2000

s/_____
Notary Public

December 14, 2000

John L. Fossum, Esq.
P.O. Box 840
Northfield, Minnesota 55057

Minnesota Court of Appeals Case No. C7-00-2090

Dear Mr. Fossum:

Last Friday, December 8, 2000, I was surprised to receive a NOTICE OF CASE FILING from the Court of Appeals. However, later in the mail of that day I received your NOTICE OF APPEAL TO THE COURT OF APPEALS which explained the earlier NOTICE. I am still at a loss as to what action the Court took in the November 2 Order that is being appealed. In fact, the last communication I received from the Court concerning my children was a notice of a proceeding on September 26, 2000, at 9AM which I did not attend for reasons I listed in my affidavit to Judge Johnson of September 12, 2000. I am copying this letter to the Court Administrator and trust that one of you will provide me with a copy of the Order of November 2.

I am also perplexed by another part of your NOTICE. By stating to the Court of Appeals, relative to me, "Phone Number not known to appellant," it appears to me that you are either (1) not familiar with this case, or (2) you are trying to mislead the Court of Appeals in their impression of me.

If the first is true I would conclude that you are incompetent for my address and phone number are clearly stated in every communication I have had concerning this case (and they are many) and thus it would appear you have not even given a cursory look into this file. Rule 1.1 of the Rules of Professional Conduct state,"A lawyer shall provide competent representation to a client. Competent representation requires ... thoroughness and preparation reasonably

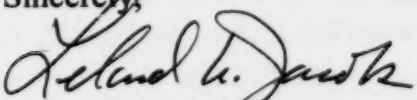
necessary for the representation." Furthermore, it would seem, before bringing an appeal a lawyer should be reasonably familiar with the case they are appealing.

If, rather, you are attempting to mislead the Court of Appeals as to the stability of these children's dad, then, Rule 3.3 states, "(a) A lawyer shall not knowingly: (1) make a false statement to a tribunal..."

I can think of no other reasons for your false statement and because of this I am forwarding a copy of this letter to the Ethics Chair of your district along with a copy of your NOTICE that contains the false information.

I trust that I will be provided with a copy of the Order that is being appealed by return mail.

Sincerely,



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Phone: 612.384.8744

cc: Stephen R. Ecker, Esq.
Meredith A. Erickson, Asst. Co. Atty.
Kathleen Glewwe, GAL Inc.
Frederick K. Grittner, Office of Clerk of the Appellate Courts
Robert L. Langer. Court Administrator
Brian Weber, Ethics Chair

Supreme Court, U.S.
FILED
JAN 28 2002
OFFICE OF THE CLERK

No. 01-913

IN THE

Supreme Court of the United States

LELAND JACOBS,

Petitioner,

v.

RICE COUNTY, MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION

MEREDITH A. ERICKSON
Attorney for Respondent
Rice County Attorney's Office
218 Northwest Third Street
Faribault, MN 55021
(507) 332-6103

171933

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Does the Petitioner's mere assertion that he did not receive his mailed copy of the order terminating his parental rights give rise to a constitutional claim of denial of due process or equal protection?

STATEMENT OF THE CASE

Two termination of parental rights petitions were filed on June 6, 2000 in Rice County District Court. One of the petitions involved the Petitioner's two children and the other petition related to a third child. Petitioner's ex-wife was the parent of all three children. Petitioner was a party only to the proceedings involving his two children. Hearings concerning these two petitions were joined although separate Notices of Filing of Order were issued for each file.

A settlement conference was scheduled for September 21, 2000 and a trial scheduled for September 26, 2000. In the matters involving his two sons, separate Summons for both the settlement conference and trial were prepared and personally served upon Mr. Jacobs on August 25, 2000, by a deputy sheriff of Ramsey County. The affidavits of service were returned to the Rice County Court Administrator and filed with the court on August 30, 2000.

Petitioner sent a letter to the court dated September 12, 2000 indicating that he would not be appearing on this matter in Rice County District Court. A trial was held on September 26, 28 and 29, 2000 and the Court issued Findings of Fact, Conclusions of Law and Order terminating Petitioner's parental rights on November 2, 2000 which was filed with the Court Administrator on November 3, 2000.

The Rice County Court Administrator issued and mailed the Notice of Filing of Order on November 3, 2000. The notice was served by mail on the Petitioner, the attorney for the children, the county social worker, the attorney for the mother and the guardian ad litem.

An appeal was timely filed by the mother and her attorney, one of the six parties listed on the Notice of Filing

of Order. Following oral argument, the Minnesota Court of Appeals affirmed the termination of parental rights order. The Minnesota Supreme Court denied further review.

REASONS FOR DENYING THE WRIT

Petitioner alleges that he was denied due process because he failed to timely receive a copy of the court's order terminating his parental rights. He asserts that he did not receive an order from the court until after he requested a copy and after the thirty (30) day period for appeal had run.

Mr. Jacobs was personally served with the Summons and Petition for Termination of Parental Rights when this action was initially commenced. Mr. Jacobs notified the Court shortly thereafter that he would not attend any of the hearings in this matter. He had also failed to attend the seven scheduled review hearings in the underlying child protection case in 1998 and 1999 after appearing for the initial hearing in May 1998. Mr. Jacobs advised the court in a letter dated September 12, 2000:

> In summary, I do not plan on appearing in Rice County District Court on this matter and have my right to privacy further invaded. As I stated earlier, I believe Rice Court District Court is without personal jurisdiction over me and there is certainly no basis in fact for the court to even consider what it appears the court is considering. App. 23

Mr. Jacobs included his post office address in his correspondence.

The Minnesota Rules of Juvenile Procedure set out the actions that both the court and court administrator's office must follow in a termination of parental rights proceeding.

In accord with Rule 74.05 Subd 3, following a termination trial, if a court finds that the statutory grounds set forth in a petition for termination of parental rights are proved, the court shall terminate parental rights and the findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 46. The court administrator, under Rule 46, is required to mail the court orders to each party, the county attorney and anyone else as the court may direct. Filing and mailing by the court administrator must be accomplished within 10 days of the date the judicial officer delivers the order to the court administrator.

Like the Federal Rules of Civil Procedure, the Minnesota Rules of Juvenile Procedure permit orders to be served by mail at the party's last known address. Such service is complete upon mailing. Minn. R. Juv. Proc. Rule 68.06 (2000).

Service by mail of the order would appropriately be based upon the address Mr. Jacobs listed in his letter. The address listed in his correspondence is identical to the one used by the court administrator's office when sending the Notice of filing of Order. The Court signed the Order on November 2, 2000, and it was filed by the court administrator on November 3, 2000. On that same day the court administrator's office served upon the parties, by mail, the Notice of Filing of Order. The Notice of Filing of Order relating to Mr. Jacobs' two children was sent to Mr. Jacobs, the attorney for his children, the social worker assigned to the case, the attorney for the mother and the guardian ad litem.

In his appeal to the Minnesota Court of Appeals, Mr. Jacobs submitted a copy of a Notice of Filing of Order, which did not include his name, in support of his claim that he was not properly notified. In an attempt to mislead that court, he did not advise them that the Notice of Filing he

supplied in support of this claim was the notice relating to the other child of his ex-wife, In Re Welfare of P.P., Case file # 66-J1-050326. Mr. Jacobs was not a party to that action because he was not a parent to that child. He *was* listed on the Notice of Filing for the case relating to his children, In Re the Welfare of J.J and N.J., Case File #66-J1-00-050327.

Petitioner offers no evidence that the Notice of Filing of Order on the case involving his two children was not mailed other than the misleading information cited above and accordingly there is no merit to the Petitioner's contention. The same procedure was followed for all six parties listed on the Notice. Of those parties, one chose to timely appeal. The court administrator's file establishes compliance with standard office practices and since the evidence is unrebutted, the conclusion that notice was received will stand. *Nafstad v. Merchant*, 303 Minn. 569, 228 N.W.2d 548 (Minn. 1975).

Petitioner makes no claim that the court administrator's office failed to follow standard office procedure or that such practices were carelessly executed. The mere denial of receipt does not rebut the presumption. There must be proof of failure to follow standard practice, careless execution of the practice, or failure to mail at all to establish that the presumption is unreasonable. *Meckel v. Continental Resources Co.*, 758 F.2d 811 (2d Cir. 1985).

Petitioner claims that the trial court should have known that he planned on appealing this decision because of the things he had earlier appealed. These earlier appeals included four appeals on three different cases to the Minnesota Court of Appeals including his Ramsey County dissolution proceeding, child support determination in Rice County, two different orders from the child protection proceeding, and child support determination appeals to the Minnesota Supreme Court and United States Supreme Court. Even if the judge issuing the

termination order was aware of all these other appeals involving other cases and judges, the obligations of the court and court administrator's office do not change. Each party to the proceeding is entitled to the same notice. The Notice of Filing of Order was sent to all of the parties by the method approved by the Minnesota Rules of Juvenile Procedure.

Mr. Jacobs was personally served the Summons and Petition on August 25, 2000. He responded to the Court by letter dated September 12, 2000, executed by Mr. Jacobs on September 14, 2000 and received by the District Court on September 15, 2000. The address contained in this letter was the same one used by the court administrator when sending the Notice of Filing of Order. The Court issued its Findings of Fact, Conclusions of Law and Order on November 2, 2000. The order was filed on November 3, 2000 and Notice of Filing of Order was sent to the petitioner and five other parties on the same day. One of the parties timely appealed the court's Order to the Minnesota Court of Appeals.

CONCLUSION

The Rice County Court Administrator properly filed the Court's order terminating the Petitioner's parental rights. The Notice of Filing of Order was timely completed and served by mail on all the parties to this action. There is no evidence to support that the Notice was improperly mailed and accordingly Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

MEREDITH A. ERICKSON
Attorney for Respondent
Rice County Attorney's Office
218 Northwest Third Street
Faribault, MN 55021
(507) 332-6103

Supreme Court, U.S.
FILED
FEB 19 2002

No. 01-913

IN THE

Supreme Court of the United States

Leland W. Jacobs,

Petitioner,

v.

Rice County, Minnesota

Respondent.

On Petition For Writ Of Certiorari
To The Minnesota Supreme Court

PETITIONER'S REPLY BRIEF

Leland W. Jacobs, *pro se*
576 North Lexington Parkway
Saint Paul, Minnesota 55104
Tel: 612.384.8744

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Introduction

In their Brief In Opposition, Rice County lists a number of reasons why they think that the petitioner's Petition for Certiorari should be denied. They are:

(1) that the petitioner did receive timely notice of the trial court's action (it was sent to his Post Office box) and thus, he could have appealed the decision in a timely fashion.

(2) the trial court and clerk's office would have had no idea that he planned an appeal.

Before addressing these two arguments the petitioner would like to address an allegation made by Rice County on the bottom of page 3 of their Respondent's Brief. They say, "In an attempt to mislead the court (Minnesota Court of Appeals), he (the petitioner) did not advise them that the Notice of Filing he supplied in support of his claim was the notice relating to the other child of his ex-wife (born during their marriage), ..." The petitioner was not trying to mislead the court. The petitioner is guilty of assuming too quickly that any notice sent to him applies to his case and is also guilty of not reading the notice and comparing the numbers on it to see if he should really have gotten that notice or it should have gone to someone else. In retrospect, the clerk's office had mailed the petitioner a notice that did not apply to his case and the petitioner did not catch it. Of greater import would be the fact, now stated by Rice County that their court administrator's office sends out notices to people to whom the notices do not apply; and thus it can be logically inferred that, the court administrator's office of Rice County does not send out notices to people to whom the notices should go.

Rice County states that it is to be presumed that the petitioner did receive notice. A presumption is, "an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. A presumption is either conclusive or rebuttable." Black's Law Dictionary, *6th Edition*.

Rice County also makes mention several times that the petitioner used a post office box for a return address. The reason that the petitioner used a post office box is that his residence is not a secure place to receive mail. He lives at a home with other unrelated adults and the mailbox at his home is on the outside of the home. Thus, if he had used his home address, Rice County could have sent him notice and he may not have gotten it. However, when he uses his post office box, he is the only one with a key for it and that key, along with the keys for his home and car are continually in his presence. Thus, he can certify with absolute certainty that he did not receive the notice of the termination of his parental rights until 20 days after his right to appeal that decision had lapsed; because, if that notice had been mailed to him he alone would have had access to it; and, he knows he did not receive it.

Further, he had sought appellate review earlier on this case and was patiently waiting for its adjudication as he was told he would have to do by an Order of the Minnesota Court of Appeals on May 4, 1999. File # C7-99-560.

One final note as to the mailing habits of the Rice County administrator's office. On April, 13, 2000, there was a hearing scheduled relative to the petitioner's children. The petitioner usually received by mail a copy of any order that came from each hearing . When the petitioner did not receive

a copy of an order, he sent the court administrator a letter asking him what had happened. He mailed it on May 21, 2000. When he did not get a reply to that letter, he sent another letter via registered mail on May 31, 2000. He received his original letter back with a handwritten note that the matter had been continued.

Thus, there is evidence aplenty that Rice County is derelict in sending notices: (1) their brief states that the petitioner was supplied a notice that did not pertain to his case; (2) the post office box that the petitioner used in his communications with Rice County was a secure place for him to receive mail and he states unequivocally that he did not receive notice of the court's action until 20 days after the last day he could have appealed the decision; (3) the petitioner has a history of seeking appellate review of what was happening in Rice County, and in particular three points that have not had appellate review to this day; (4) Rice County had failed to communicate what the trial court was doing to the petitioner's children previously, and it had taken a registered letter to get the information.

The presumption Rice County relies on is rebutted by those four facts pertaining to the history of this case.

Rice County states that the trial court and/or the administrator's office would be unaware of any appeal that the petitioner was waiting to pursue. Rice County mentions that there had been other appeals relating to the petitioner's divorce that took place in its and another jurisdiction. That is true. Basically, the petitioner's appeal of the divorce from the other jurisdiction (Ramsey County) was over the granting of custody of his children, who had been living with him, to his

ex-wife who he personally knew to be abusive to the kids. Nowhere has the petitioner ever indicated that he expected a trial judge in Rice County to be aware of any appeal the petitioner made regarding the decisions in Ramsey County other than, because the divorce decree was part of the record in Rice County, the petitioner expected the trial court in Rice County to be aware of the "liberal visitation rights" that had been granted the petitioner.

Rice County also mentions another associated case where the appellant appealed his child support determination to this Court. In that case, this appellant felt that the Rice County CSO was practicing law without a license, and further, that the administrative branch of government was doing something that belonged to the judicial branch and also, he maintained that his wife had been living with him during part of the time that Rice County wanted him to also pay child support to them.

The appellant realizes that this Court will usually defer the interpretation of state law to the state courts and intervention by this Court is very unlikely. However, in that case, too, the appellant felt strongly that Rice County was wrong. This Court, in its wisdom, denied certiorari. However, as mentioned in the letter that is part of the Appendix(p.22), the Minnesota Court of Appeals finally decided just what this petitioner had maintained in his first two claims when they and the Minnesota Supreme Court confirmed Holmberg v. Holmberg, et al., 588 N.W.2d 720 (Minn.1999).

Putting aside the references by Rice County to both the petitioner's appeal of his divorce decree to the Minnesota Appellate Courts and his appeal of his child support determination to this Court, as a smoke screen by Rice County, the question we arrive at is: Is there anything in the record that

would have notified Rice County that there were unresolved issues that the appellant was almost certainly to seek appellate review upon final adjudication of this case by the district court?

There is. On March 29, 1999, the petitioner appealed to the Minnesota Court of Appeals and stated that the two issues he sought appellate review of were:

> "a. Whether Rice County District Court has subject matter jurisdiction to alter the visitation rights of the non-custodial parent when another court is the original source of the divorce and custody decree and the non-custodial parent appeared voluntarily in the Rice County District Court to observe whether he would be granted custody of the children?
> b. Whether Rice County District Court is violating Minn. Stat. §631.52, Subd.1 in refusing to grant the non-custodial, non-abusive parent custody of these children?"
> Minnesota Court of Appeals File # C7-99-560.

On May 4, 1999, the Honorable Judge James C. Harten of the Minnesota Court of Appeals ordered that the appellate review the petitioner sought was "premature" and that the petitioner must await final adjudication in the district court.

Rice County was on notice that the petitioner's appellate review of these questions had to await final adjudication.

Never was it explained to the petitioner in subsequent orders or written communications with Rice County the legal basis for the actions of the district court that the petitioner felt were contrary to law. Nor, had it ever been explained earlier.

CONCLUSION

When reviewing a district court's decision to terminate parental rights, a Minnesota appellate court must determine whether the district court's findings are supported by substantial evidence, and whether the district court's conclusions are clearly erroneous, In re Welfare of L.A.F., 554 N.W.2d 393,396 (Minn.1996).

Seeking appellate review of whether a trial court has jurisdiction over one's person after they have said they do not plan on granting custody of the children to that person is not abandonment of one's children.

Seeking appellate review of the word "parent" in a statute when the trial court has said the word only applies to custodial parents is not abandonment of one's children.

Seeking appellate review of the right of a one court to alter the visitation rights granted a non-custodial parent by the order of another court is not abandonment of one's children.

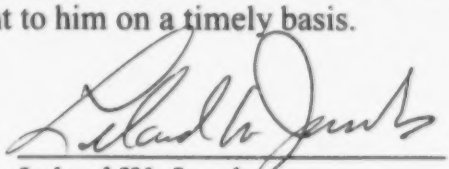
Not appearing before a trial court so that an issue may be preserved for appellate review is not abandonment of one's children.

If a trial court terminates the rights of a parent and the decision will not pass appellate review, what better way to make the decision final than for someone to prevent the parent from being able to appeal that decision?

The petitioner has been denied Due Process and Equal Protection as guaranteed him in the Constitution of the United States. Due Process because he has been denied appellate

review of his Constitutional right to raise his own children. And, he has been denied Equal Protection in this matter because a timely notice was apparently sent to all the other parties but no notice was sent to him on a timely basis.

Dated: February 12, 2002



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